Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
1998 Biennial Regulatory Review of the	)	MM Docket No. 98-35
Commission's Broadcast Ownership Rules	)	
and Other Rules Adopted Pursuant to Section 202	)	
of the Telecommunications Act of 1996	)	

REPLY COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS") hereby respectfully submits these reply comments in the above proceeding, in which the Commission, pursuant to the mandate of Section 202 (h) of the Telecommunications Act of 1996 (the "Telecom Act"),[1] is reviewing the necessity of certain of its broadcast ownership rules.

In its initial comments, CBS decisively showed that the national television ownership rule is unnecessary to protect either competition or diversity -- a conclusion first reached by the Commission itself in 1984,[2] and reaffirmed by it only three years ago.[3] We file these comments to respond to certain arguments made by the Network Affiliated Stations Alliance ("NASA") to

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) (the "Telecom Act").

[2] Report and Order, Amendment of Commission's Rules Relating to Multiple Ownership, 100 FCC 2d 17, 24 (1984) ("Multiple Ownership"); Memorandum Opinion and Order, Amendment to Commission's Rules Relating to Multiple Ownership, 100 FCC 2d 74, 97 (1984) ("Multiple Ownership Reconsideration").

[3] See, Further Notice of Proposed Rulemaking, MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3566-67 (1995) ("Further Notice").

the effect that repeal of the rule would somehow undermine affiliated stations in their dealings with their networks, and would also contravene the intent of Congress in adopting the Telecom Act. We also reply to the arguments of certain parties that the Commission's definition of a "market" for purposes of the local radio ownership rules should be modified in ways which would impose more restrictive limits on common ownership than Congress found appropriate in enacting the statute.

I. THE ARGUMENT THAT INCREASED OWNERSHIP OF STATIONS IN SOME MARKETS WOULD HELP NETWORKS TO WIN PROGRAM CLEARANCES AND OTHER CONCESSIONS FROM AFFILIATED STATIONS IN OTHER MARKETS IS WITHOUT BASIS IN FACT OR LOGIC.

In its comments, NASA argues that "expansion of a network's geographic and population coverage translates directly into an extension of the power networks hold over affiliates."[4] Specifically, NASA claims that "if networks can own or have a significant interest in those stations that cover the most important markets in the United States, affiliates would no longer be able to maintain their independence to preempt inappropriate network programming in favor of important local news, public interest and local sports programming."[5] Upon examination, it is clear that these arguments are entirely without basis.

On its face, there is no logic to an argument which postulates that a network which had achieved through its owned stations, say, 50 percent coverage of the national audience, could afford to be indifferent to the companies that control its access to the other half -- or that

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[4] Comments of Network Affiliated Stations at 4 ("NASA Comments").

[5] Id. at 12.

ownership of stations in some markets could help a network win clearances or reduce its compensation payments in others. In fact, the value to a network of any particular station's clearance of its network programs is a function of the value to that network of penetrating the individual market in which the station is located. This value is unaffected by clearances in other markets, whether by affiliated or owned stations.

The fact is that the terms on which a network and any one of its affiliates do business turn on the relative value of each to the other -- values that are determined by market conditions in the particular DMA in which the affiliated station is located. The crucial variables in this equation are the strength of the relationship that the station and the network have each been able to establish with that market's viewers; the value to the network of exposing its programs in that particular market; and the alternatives available in that local market both to the station as a purchaser of programming and to the network as a seller of a programming service. Any network's two-hundred affiliation agreements may have many standard terms, but they will also have crucial terms -- money terms -- that vary sharply from affiliate to affiliate, and as to which the number or reach of the stations owned by the network elsewhere having no bearing.

Clearance patterns similarly vary significantly from affiliate to affiliate. Networks, of course, generally seek to maximize clearances for their programs. The capacity of advertising revenue alone to support expensive first-run television programming is primarily a function of the size of the audience to which that programming is exposed. Preemptions significantly impair the value of network programs to advertisers.[6] This is not to say that all preemptions are

[6] Since advertising campaigns are often linked to particular events and promotions, advertisers value the fact that network programs, and the commercial messages they carry, are (continued...)

undesirable, even from a network's point of view. The network/affiliate relationship is very much a partnership, and it is in the interest of both partners for an affiliated station to be an inextricable part of its community. Many preemptions serve that end, such as those which enable an affiliate to cover important local news events and other events of great community interest. Indeed, CBS's owned stations themselves preempt network programming for special local programming of this kind.

The preponderance of affiliate preemptions, however, has nothing to do with local news or community events. In 1995 comments, for example, CBS observed that during the 1994-95 broadcast season, only 8.1 percent of network prime time preemptions by CBS affiliates were attributable to coverage of local news and public affairs.[7] The fact is that most affiliate

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[6](...continued)
transmitted simultaneously to audiences within virtually every geographic market within the United States. Preemptions thus reduce not only the size of the audience exposure being purchased by the advertiser, but also the extra value of full simultaneous network exposure.

There is almost no way that a network can capture the value of its program in the geographic market in which it has been preempted. It is generally extremely difficult to place a single series, much less a single program, on an alternate station when the affiliate has rejected that program. Even if such alternative placement is possible, the program will be deprived of essential promotional support generally provided in other parts of the network schedule.

[7] See, Reply Comments of CBS Inc. in MM Docket Nos. 91-221 and 87-8 (June 19, 1995) at 6. These preemptions were dwarfed by those for sporting events which represented 41 percent of the 1994 preemptions, and those for syndicated programming, which were 23 percent of the total. (Telethons and paid political broadcasts accounted for an additional 7.2 and 2.5 percent, respectively.) See, Comments of CBS Inc. in MM Docket 95-92 (October 30, 1995) at 19. CBS recognizes, of course, that the availability of local sports to television viewers serves a genuine public interest. That fact, however, does not change the primarily economic nature of an affiliate's decision to preempt network programming to carry highly profitable sports broadcasts. Moreover, since the average American household now receives 13 over-the-air channels, see Nielsen Media Research, Television Audience

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preemptions are primarilly economically motivated, since substituting other programming for network offerings allows the affiliate to sell all commercial availabilities in the time period for its own account while receiving the benefit of "audience flows" from network programming immediately preceding it. Networks, of course, seek to limit such preemptions in negotiations with their affiliates. Their success, however, varies markedly among affiliates, and is very much affected by the same local market variables that affect compensation rates.

The repeal of the national ownership rules could and would have no impact on the market conditions affecting the ability of any given affiliate to negotiate compensation payments or withhold clearances, no matter how many stations a network may own in other markets. Whatever the audience coverage a network achieves through owned stations, it will still value each local market in which it does not own a station in proportion to the economic importance of that particular market.

Even if ownership of stations in some markets could help a network bargain for clearances and other concessions in other markets -- which it cannot -- that result would be devoid of regulatory significance, since it would relate solely to the division of profits between networks and their affiliates.[8] There is plainly no basis for government to maintain otherwise

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[7](...continued)
1997 at 11, it is virtually certain that a local sports event having significant appeal will be available to most viewers on some station in the market, regardless of whether a particular affiliate preempts network programming to carry it.

[8] In fact, a significant increase in the number of suppliers of network and syndicated programming to local stations has greatly increased the bargaining power of affiliates vis-a-vis networks in recent years. See, Comments of CBS Inc. in MM Docket 95-92 (October 30, 1995) at 8-12. While NASA submits a 1995 study by National Economic Research Associates Inc. purporting to show that the bargaining power of affiliates has not increased,
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pointless and inefficient structural regulations, not to prevent anticompetitive behavior, but to protect affiliates' ability to maximize advertising revenues.

In its 1984 decision to relax and, in six years, "sunset" the national television ownership rule on an equal basis for all broadcasters, the Commission reviewed a variety of arguments for placing special ownership constraints on television network companies. The Commission rejected them all, finding that

> "the case for repeal has been made, and ...the case for treating the networks differently has not been made. There has been no demonstration that the benefits we perceive from increasing group ownership will be adversely affected by allowing networks to increase their station ownership. Equally, we have not been convinced of the alleged dangers of increased network ownership. In short, we have no basis for imposing additional restraints on the networks."[9]

We submit that no greater basis exists now than in 1984 for limiting ownership of stations by network companies. Indeed, given the economic challenges faced by broadcast networks,[10] the reasons for affording them the opportunity to realize the efficiencies of group ownership are more compelling than ever.

II. CONGRESS HAS MANDATED A DE NOVO DETERMINATION BY THE COMMISSION OF WHETHER THE PUBLIC INTEREST WOULD BE SERVED BY RETAINING THE NATIONAL OWNERSHIP RULE.

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CBS has previously rebutted the conclusions of that study. See, Reply Comments of CBS Inc. in MM Docket No. 95-92 (November 27, 1995) at 4-18.

[9] Multiple Ownership, supra, 100 FCC 2d at 54.

[10] See, "Nets Are Big 4's Weakest Link," Broadcasting & Cable, March 2, 1998, p.4; Comments of CBS Corporation at 19-21.

Section 202 (h) of the Telecommunications Act of 1996 unambiguously directs the Commission to "review...all of its ownership rules bienennially," to "determine whether any such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to no longer be in the public interest." In its comments, NASA proposes, however, that various excerpts of the floor debate preceding adoption of the Telecom Act should be understood to contradict the plain meaning of this statutory mandate. These excerpts, according to NASA, establish that "relaxing the national television ownership rule would violate the intent of Congress in passing the 1996 Act." [11]

Obviously, Congress's statutory directive to "review" and, if necessary in light of competition, to "modify or repeal" the national ownership rule on a biennial basis would hardly make sense if it was Congress's intent that the rule never be modified or repealed. But the most fundamental of all principles of statutory construction holds that the first place to discern Congress's intent must be in the language of the statute itself. Here, the statutory language is unmistakable in its meaning. Accordingly, we believe that NASA's argument that Congress has in any way sought to constrain the Commission in its exercise of independent judgment with respect to the future of the national ownership rule is entirely without basis.

III. THE COMMISSION SHOULD NOT CHANGE ITS DEFINITION OF A MARKET FOR PURPOSES OF THE LOCAL RADIO OWNERSHIP RULES.

A number of parties urge the Commission to adopt changes to its definition of a "market"

[11] NASA Comments at 6.

for purposes of the local radio ownership rules.[12] These changes are clearly calculated to reduce the extent of permissible common ownership which the Congress, in enacting the Telecom Act, found to be consistent with the public interest. Such backdoor attempts to undo the intent of Congress must be rejected.

In directing the Commission to revise Section 73.3555 (a) of its regulations to increase the number of radio stations that could be commonly owned in markets of various sizes, Congress was obviously fully aware of former subdivision (a) (3) of that section (now subdivision (a) (4)), which specified how a "market" would be defined. That definition -- in which Congress made no change -- was necessarily central to its judgment as to how many stations in a "market" a single entity should be permitted to own. Indeed, without a definition of "market," Congress's mandate that an entity was to be allowed to own a specific number of stations in a market of a particular size would be both indecipherable and meaningless. Since legislation enacted by Congress cannot be construed in such a manner, the only possible reading of Section 202 (b) of the Telecom Act is that it incorporated the existing definition of a "market" set forth in former Section 73.3555 (a) (3) of the Commission's rules.

In any event, the definition of "market" embodied by the Commission's rules -- based on the number of stations whose principal community contours overlap with those of the stations to be commonly owned -- was adopted by the Commission after careful consideration, and no persuasive reason has been presented why it should be changed. In its 1992 Report and Order liberalizing its then-existing radio duopoly rules, the Commission initially decided to base its

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[12] See, Comments of Gross Communications Corporation; Comments of Air Virginia, Inc., et al. at 4-9; Joint Comments of Greater Media, Inc. and Press Communications LLC.

market definition on the radio metro market recognized by Arbitron for stations assigned to such markets, while using the contour overlap standard for stations outside designated market areas.[13] In so doing, the Commission noted that the overlap standard was "likely to be conservative in counting the number of stations receivable by listeners," and that "[t]he level of competition is therefore likely to be higher than the overlap numbers might suggest."[14] On reconsideration, the Commission concluded that it would determine the number of radio stations in a particular "market" based on the contour overlap standard in all situations, and not just for stations outside Arbitron's designated radio markets.[15] The Commission stated that it was "convinced ... that this revised measure will reflect the actual options available to listeners and will reflect the market conditions facing the particular stations in question."[16] Apart from the desire of some parties to make the Commission's local radio ownership rules effectively more restrictive, there is nothing in the record warranting a change in this conclusion.[17]

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[13] Report and Order, Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2778-79 (1992).

[14] Id. at 2779.

[15] Memorandum Opinion and Order, Revision of Radio Rules and Policies, 7 FCC Rcd 6387, 6395 (1992).

[16] Id.

[17] Several parties argue that the Telecom Act's elimination of the audience share component of the local radio ownership rules necessitates a change in the manner in which the Commission determines the number of stations in a radio market. See, Comments of Gross Communications Corporation at 4-5; Comments of Air Virginia, Inc., et al. at 7-8. Since the audience share commanded by any particular stations within a market is irrelevant to the number of stations *available* to listeners in that market, this contention makes no sense other than as an argument that the extent of common ownership currently allowed by the rules is too liberal. The Commission is not free, however, to reverse Congress's fundamental

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The purpose of this proceeding is for the Commission to review its ownership rules and "repeal or modify any regulation it determines to be no longer in the public interest"; it is not to cut back on deregulatory action already taken by the Congress in adopting the Telecom Act. The Commission should reject proposals to modify its definition of a radio market which would have this effect.

CONCLUSION

For the reasons set forth above, and in our main comments in this proceeding, the national television ownership rule should be repealed. Further, no change should be made in the Commission's definition of a market for purposes of the local radio ownership rules.

Respectfully submitted,

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[17](...continued)
decision to relax the local radio ownership limits without reference to an audience share cap by adopting a newly restrictive definition of a radio market.